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Global Foreign Exchange Division
39th Floor
25 Canada Square
Canary Wharf
London
E14 5LQ

TO:

Consultation on Contractual Stays
Resolution Office
Hong Kong Monetary Authority ("HKMA")
55th Floor
Two International Finance Centre
8 Finance Street, Central, Hong Kong

Via email: resolution@hkma.gov.hk

March 20, 2020

Re: Rules on Contractual Stays on Termination Rights in Financial Contracts for Authorized Institutions

Dear Ladies and Gentlemen,

The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association is grateful for the opportunity to provide input to the Hong Kong Monetary Authority's Consultation Paper (CP 20.01) on the implementation of the Rules on Contractual Stays on Termination Rights in Financial Contracts for Authorized Institutions under the Financial Institutions (Resolution) Ordinance (Chapter 628), published 22 January 2020 (the "Rules").

The GFXD was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 26 global foreign exchange (FX) market participants,[1] collectively representing a significant portion of the FX inter-dealer market. Both the GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

[1] Bank of America Merrill Lynch, Bank of New York Mellon, Barclays, BNP Paribas, Citigroup, Crédit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds Bank, Mizuho, Morgan Stanley, MUFG Bank, NatWest Markets, Nomura, Northern Trust, Royal Bank of Canada, Scotiabank, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.

The FX market is the world's largest financial market and the effective and efficient exchange of currencies underpins the world's entire financial system. The FX market is also the basis of the global payments system. The volume of transactions is therefore very high, and these transactions are often executed by market participants across geographical borders.

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Q2. Do you have any views on the scope of the covered financial contracts to be subject to the Stay Rules? Should other types of contracts also be included in your view?

We wish to highlight the practicalities of including spot FX transitions within the scope of the Rules.

The principal default risk inherent in spot FX transactions is limited to non-performance by the counterparty when its payment obligations fall due.

The scope of covered FX financial contracts is set out in Sections 3.2 and 3.14 D of the Rules.

3.2 The MA proposes that a contract with all of the following features would fall within the scope of the Stay Rules as a within scope contract:

i. *a contract entered into by any of the covered entities as described in paragraph 3.4 below;*
ii. *a contract that is a covered financial contract, as described in paragraph 3.14 below;*
iii. *a contract that is governed by non-Hong Kong law;*
iv. *a contract that contains a termination right; and*
v. *a contract where the counterparty is not a financial market infrastructure (including a central counterparty).*

3.14 The covered financial contracts proposed to be subject to the Stay Rules are:
D. swap agreements, including: (i) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation; (ii) total return, credit spread or credit swaps; (iii) any agreements or transactions that are similar to an agreement referred to in point (i) or (ii) which are the subject of recurrent dealing in the swaps or derivatives markets.

Spot FX transactions are typically not entered into pursuant to written master agreements or other agreements that provide for express default rights or transfer restrictions. Instead, these transactions are documented via a confirmation setting out the economic terms of the trade.

Spot FX has traditionally not provided for early termination default rights specifically because of their short-term nature.

Consequently, we support the exclusion of spot FX transactions that do not provide for contractual early termination default rights as incorporating the requirements of the rules on contractual stays for these transactions would require a very significant overhaul of existing market practice and documentation. This position is also in line the US Federal Reserve Bank's final rules[2] published in

[2] https://www.govinfo.gov/content/pkg/FR-2017-09-12/pdf/2017-19053.pdf

2017 which provided an exemption for qualifying financial contracts that have no transfer restrictions or default rights.

However, we would highlight that even where spot FX transactions provide for contractual early termination default rights, it is unlikely that these rights could be exercised effectively before the covered entity's obligations fall due. Therefore, we would question the effectiveness of the resolution authority's ability to enforce a contractual stay on these transactions, particularly where the suspension of termination rights has a limited duration of up to two days.

On other matters, i.e. Q1 and Q3-Q9, we support the position presented by ISDA in their letter dated 19 March 2020.

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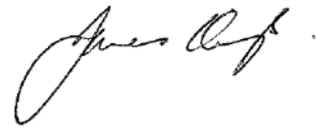
We greatly appreciate the opportunity to share our views on this topic. Please do not hesitate to contact John Ball on +852 2531 6512, email jball@gfma.org, should you have any questions or wish to discuss any of the above.

Yours sincerely,



James Kemp
Managing Director
Global Foreign Exchange Division, GFMA